
(2011) 12 JH CK 0022
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2124 of 2005

Bhim Sen Maji

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 — Section 18(3)(d)

Citation : (2012) 1 JCR 336

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—Counsel for the petitioner submitted that the petitioner was promoted as Head Master of Shri Vijay Bhakti Prem Suri Swetamber Jain High School. Madhuban. Giridih. Initially, the petitioner was appointed as an Assistant Teacher with effect from 1st January, 1980 and thereafter, the petitioner was promoted to the post of Head Master and the promotion of the petitioner was approved by the respondents-authorities vide order at Annexure-2 to the memo of the present petition and therefore, the petitioner is entitled to the salary in the pay scale of the Head Master from 16th March, 1992 till April, 1998. Promotion was given to the petitioner to the post of Head Master with effect from 19th March, 1992, as per Annexure-2 to the memo of the present petition. Moreover, the petitioner has also not been paid salary for the period running from November. 1996 to Feb. 2000 and for other different intervals of time. These details have been stated in the prayer portion of the writ petition especially in paragraph Nos. 1(B) and 1(C).

2. It is further submitted by the counsel for the petitioner that looking to the counter-affidavit, filed by the respondents, especially at paragraph-11 thereof, the respondents are admitting that the arrears of salary and dearness allowances, as claimed by the petitioner, are required to be paid, which is at Rs.

1.43.803/- after adjustment of Rs. 57.022/-, which has been illegally received by the petitioner. Thus, the prayer at paragraph Nos. 1(B) and 1(C) have been accepted to be given by the respondents, but so far as prayer No. 1(A) i.e. for the payment of salary to the post of Head Master, has been disputed by the respondents mainly on the ground that the petitioner's promotion was not approved by the competent authority of the respondents-State. As per paragraph-7 of the counter-affidavit, promotion has to be approved by the Vidyalaya Sewa Board constituted u/s 10 of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981 whereas, promotion of the petitioner was unauthorisedly rectified by the District Education Officer, Giridih, as per Annexure-2 to the memo of the present petition. This officer has no power, jurisdiction and authority to grant rectification of the promotion of the present petitioner. Counsel for the petitioner submitted that even if the claim of the petitioner to the post of Head Master's pay scale is not accepted, rest of the prayers i.e. prayer Nos. 1(B) and 1(C), which have been admitted in paragraph-11 to the counter-affidavit, may kindly be allowed and the amount admitted by the respondents may be ordered to be paid within stipulated time.

3. Counsel for the State submitted that a detail counter-affidavit has been filed. So far as prayer No. 1(A) is concerned, it cannot be granted to the petitioner mainly for the reason that the prayer of the present petitioner to the post of Head Master has never been accepted by the State authorities because it was never rectified by the competent authority as per Section 18(3)(d) of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981. The competent authority for rectification is Vidyalaya Sewa Board constituted u/s 10 of the Act, 1981. This authority has to rectify the promotion of the present petitioner whereas, in the facts of the present case, promotion of the present petitioner has been unauthorizedly rectified by the District Education Officer, Giridih as evident from Annexure-2 and therefore, the petitioner is not entitled to any pay scale to the post of Head Master. So far as prayer in paragraph Nos. 1(B) and (C) are concerned, the petitioner is entitled to Rs. 1,43,803/- as stated in paragraph-11 of the counter-affidavit. If this amount has not been paid to the petitioner, the same will be paid to the petitioner within stipulated time as given by this Court.

4. Having heard counsel for both the sides and looking to the facts and circumstances of the case, it appears that the present petitioner was appointed as an Assistant Teacher with effect from 1st January. 1980 at Shri Vijay Bhakti Prem Suri Swetamber Jain High School, Madhuban. Giridih. Thereafter, the petitioner was promoted to the post of Head Master. This promotion was rectified by the District Education Officer, Giridih vide order dated 30th May, 1998, as per Annexure-2 to the memo of the present petition. This rectification has no value in the eye of law looking to Section 18(3)(d) of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981. As per this section, only Vidyalaya Sewa Board has power to rectify this prayer as

constituted u/s 10 of the Act, 1981. Thus, the petitioner's promotion cannot be appreciated or rectified by any other officer than the aforesaid Board constituted u/s 10 of the Act. 1981 and therefore, the petitioner is not entitled to get any relief as prayed in paragraph No. 1(A) of the petition i.e. the petitioner is not entitled to get salary in the pay scale to the post of Head Master. So far as prayer Nos. 1(B) and (C) are concerned, it has already been stated in paragraph-11 of the counter-affidavit that the petitioner is entitled to Rs. 1,43,803/- towards the arrears of salary and dearness allowances and therefore, respondents are hereby, directed to make the payment of Rs. 1,43,803/-, if not paid, within a period of four weeks from the date of receipt of a copy of an order of this Court. If the aforesaid amount is not paid within a period of four weeks, as stated hereinabove, the aforesaid principal amount will be paid with simple interest @ 5% per annum till the actual payment is made.

5. This writ petition is allowed to the aforesaid extent.